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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,183	03/23/2006	Josep Duran Von Arx	5751-102 US	7672
26817 7590 06/01/2010 MATHEWS, SHEPHERD, MCKAY, & BRUNEAU, P.A. 29 THANET ROAD, SUITE 201 PRINCETON, NJ 08540				
EXAMINER MCEVOY, THOMAS M				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
06/01/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,183

Applicant(s)

DURAN VON ARX, JOSEP

Examiner

THOMAS MCEVOY

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 13th 2010 has been entered.

Claim Objections

2. Claim 2 is objected to because of the following informalities:

In lines 1-2, it is suggested that "comprising: comprising a pair..." should read --comprising: a pair...--.

In line 2, "a pair of said cylinders" should read --a pair of cylinders--.

Appropriate correction is requested.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlock (US 2,672,138) in view of Miller (US 6,386,197 B1).

Regarding claim 2, Carlock discloses a nasal stimulator comprising: a pair of cylinders 12, said pair of said cylinders being joined to one another by a curved tongue 8, each of said cylinders including a widening 1 in the central portion of its external portion, said widening covering the periphery of said cylinder except in a portion of said cylinder which comes into contact with a nasal septum during use (the widening surrounds the cylinders – note phantom line in Figure 2 – except for portion 3; see col. 3, lines 30-35); a peripheral rim on a lower part of said cylinder adapted to serve as a limit where the insertion of the stimulator into the nose should not pass (part 14/16 can be regarded as a rim because it must abut base 6 since portion 15 must fit snugly into lumen 11; it can be considered as a point which the stimulator should not pass; no limitations describe the rim as extending radially beyond the outer diameter of the cylinder base) and a protruding support 4/10 extending from (directly connected to; not fixedly attached) said rim and adapted to add pressure on the external wall of the nose, both the widening and the protruding support capable of producing a gripping effect on the nose alar which stimulates the levator muscle (together they grip the alar and this appears to be the only structural requirement disclosed that causes the claimed stimulation). Carlock fails to disclose that each of said cylinders is internally perforated;

although one may regard the cylinders as having a perforated interior due to the perforated member 13/15. Miller discloses nasal cylinders with internal perforations 68 for holding medicament to be delivered to a user's lungs (col. 4, lines 63-67). It would have been obvious to one of ordinary skill in the art, in view of Miller, to have provided perforations in some portion of the interior of the Carlock cylinders in order to deliver a medicament to a user's lungs.

Response to Arguments

6. Applicant's arguments filed April 16th 2010 have been fully considered but they are not persuasive. Applicant has argued that Carlock does not disclose the rim as claimed. Examiner respectfully disagrees and believes that more structural limitations are required, as indicated above, in order to distinguish Applicant's rim from portion 14/16 of Carlock. The term "peripheral" does not clearly indicate a structure which extends radially beyond the perimeter of a cylinder. Applicant has generally argued that Carlock does not disclose the other limitations of the claim. Examiner has described above in detail how it is believed the remaining limitations, except for the perforated interior, are met by Carlock.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas McEvoy whose telephone number is (571) 270-5034. The examiner can normally be reached on M-F, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas McEvoy/
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
5/29/10